92017mj

ORIGINAL

RECEIVED

JAN 17 1992

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
	)	
THE FIDELIO GROUP, INC.	)	File No. BPH-910502MQ
	)	
For a Construction Permit for a new FM Station to operate on Channel 282B in New York, New York	)	

ORIGINAL

JAN 22 1992

TO: Roy J. Stewart, Chief
Mass Media Bureau

PETITION FOR LEAVE TO AMEND

1. The Fidelio Group, Inc. ("Fidelio") hereby petitions for leave to amend its above-captioned application for a construction permit for a new FM broadcast station to operate on Channel 282B in New York, New York. Fidelio's amendment is included as Attachment A hereto.

2. As set forth in the amendment and in Attachment B hereto (Declaration of T'ing C. Pei), in connection with its efforts to respond to a Petition to Deny directed against its application filed by GAF Broadcasting Company, Inc. ("GAF"), Fidelio determined that the antenna height proposed in its application in its application as originally filed did not accurately reflect the location on the Building which is available to Fidelio. While the application as originally filed was based on information which was provided to Fidelio's consulting engineers by the Building's engineer and which was believed to be accurate, there was apparently some miscommunication in the provision of that information. See

Attachments B and C hereto. The discrepancy was brought to Fidelio's attention when Fidelio investigated allegations made by GAF in its Petition (although GAF's allegations were themselves unrelated to the issue of Fidelio's proposed antenna height).

3. Having learned of the discrepancy, Fidelio instructed its consulting engineers to prepare the accompanying curative amendment so that its application would accurately reflect placement of the antenna at the proper available location. Acceptance of this amendment is clearly warranted under well-established Commission policy. See, e.g., Erwin O'Connor Broadcasting Co., 22 F.C.C.2d 140 (Rev. Bd. 1970). This amendment is not caused by the voluntary actions of Fidelio -- rather, it is necessitated by the unintended error apparently resulting from a miscommunication between the engineers representing the Chrysler Building and Fidelio. Indeed, submission of this amendment is required by Section 1.65 of the Commission's Rules.

4. Similarly, the necessity of this amendment was not at all foreseeable: having obtained what it believed to be accurate information from the Building's representatives initially, Fidelio had no reason to believe that that information might, for whatever reason, be inaccurate.

5. Acceptance of this amendment will not require the addition of any new parties or issues with respect to Fidelio's application. In fact, the amendment has virtually no effect on any aspect of that application, since it merely adjusts the

antenna height to correspond to the available space, and also the proposed power to assure that the proposed service area is virtually identical to that originally proposed. [1/] Thus, Fidelio could not (and, in any event, would not) claim any comparative advantage as a result of the amendment.

WHEREFORE, for the reasons stated, The Fidelio Group, Inc. requests leave to amend its above-captioned application as set forth in the accompanying Amendment.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for The Fidelio Group, Inc.

January 17, 1992

[1/] In this sense the amendment involves little more than a

ATTACHMENT A

RECEIVED
JAN 17 1992
Federal Communications Commission
Office of the Secretary

AMENDMENT

JAN 22 10 13 AM '92
AUDIO SERVICES DIVISION

The application (File No. BPH-910502MQ) of The Fidelio Group, Inc. for a construction permit for a new FM broadcast station to operate on Channel 282B in New York, New York is hereby amended to substitute the accompanying engineering materials for the corresponding materials in the application as originally filed.

THE FIDELIO GROUP, INC.

By: ______________________
Its President

Date: 16 January 1992

JAN 22 10 13 AM '92
AUDIO SERVICES DIVISION

ENGINEERING EXHIBIT

Amendment to Application for Construction Permit

prepared for
The Fidelio Group, Inc.
New York, New York

Ch 282B (104.3 MHz) 16.4 kW (H&V) 251 m

Table of Contents

Section V-B - FM BROADCAST ENGINEERING DATA	FOR COMMISSION USE ONLY File No. _____ ASB Referral Date _____ Referred by _____

Name of Applicant

The Fidelio Group, Inc.

Call letters *(if issued)*	Is this application being filed in response to a window? ☐ Yes ☒ No If Yes, specify closing date: _____

Purpose of Application: *(check appropriate box(es))*

- ☐ Construct a new (main) facility
- ☐ Construct a new auxiliary facility
- ☐ Modify existing construction permit for main facility
- ☐ Modify existing construction permit for auxiliary facility
- ☐ Modify licensed main facility
- ☐ Modify licensed auxiliary facility

Amendment to application BPH-910502MQ

If purpose is to modify, indicate below the nature of change(s) and specify the file number(s) of the authorizations affected.

- ☐ Antenna supporting-structure height
- ☐ Effective radiated power
- ☒ Antenna height above average terrain
- ☐ Frequency
- ☐ Antenna location
- ☐ Class
- ☐ Main Studio location
- ☐ Other *(Summarize briefly)*

File Number(s) BPH-910502MQ

1. Allocation:

Channel No.	Principal community to be served:		
	City	County	State
282	New York	New York	NY

Class *(check only one box below)*

☐ A ☐ B1 ☒ B ☐ C

☐ C2 ☐ C1 ☐ C

2. Exact location of antenna.

(a) Specify address, city, county and state. If no address, specify distance and bearing relative to the nearest town or landmark. Chrysler Building, 405 Lexington Ave., New York City, New York County, New York

(b) Geographical coordinates (to nearest second). If mounted on element of an AM array, specify coordinates of center of array. Otherwise, specify tower location. Specify South Latitude or East Longitude where applicable; otherwise, North Latitude or West Longitude will be presumed.

Latitude	40°	45'	05"	Longitude	73°	58'	32"

3. Is the supporting structure the same as that of another station(s) or proposed in another pending application(s)? ☒ Yes ☐ No

If Yes, give call letter(s) or file number(s) or both. Land Mobile Facilities

If proposal involves a change in height of an existing structure, specify existing height above ground level includi antenna, all other appurtenances, and lighting, if any.

N/A (No change proposed)

SECTION V-B – FM BROADCAST ENGINEERING DATA (Page 2)

4. Does the application propose to correct previous site coordinates? ☐ Yes ☒ No
If Yes, list old coordinates.

Latitude	°	'	"	Longitude	°	'	"

5. Has the FAA been notified of the proposed construction? ☐ Yes ☒ No
If Yes give date and office where notice was filed and attach as an Exhibit a copy of FAA

SECTION V-B – FM BROADCAST ENGINEERING DATA (Page 3)

10. Is a directional antenna proposed? ☐ Yes ☒ No

If Yes, attach as an Exhibit a statement with all data specified in 47 C.F.R. Section 73.316, including plot(s) and tabulations of the relative field. Exhibit No. N/A

11. Will the proposed facility satisfy the requirements of 47 C.F.R. Sections 73.315(a) and (b)? ☒ Yes ☐ No

If No, attach as an Exhibit a request for waiver and justification therefor, including amounts and percentages of population and area that will not receive 8.16 mV/m service. Exhibit No. Stmt A (original Application).

12. Will the main studio be within the protected 8.16 mV/m field strength contour of this proposal? ☒ Yes ☐ No

If No, attach as an Exhibit justification pursuant to 47 C.F.R. Section 73.1125. Exhibit No. N/A

13. (a) Does the proposed facility satisfy the requirements of 47 C.F.R. Section 73.207? ☐ Yes ☒ No

(b) If the answer to (a) is No, does 47 C.F.R. Section 73.213 apply? ☒ Yes ☐ No
(See Stmt B, original application)

(c) If the answer to (b) is Yes, attach as an Exhibit a justification, including a summary of previous waivers. Exhibit No. Stmt B

(See Figs. 4 & 5 original application) (original app).

15. Attach as an Exhibit a 7.5 minute series U.S. Geological Survey topographic quadrangle map that shows clearly, legibly, and accurately, the location of the proposed transmitting antenna. This map must comply with the requirements set forth in Instruction V. The map must further clearly and legibly display the original printed contour lines and data as well as latitude and longitude markings, and must bear a scale of distance in kilometers.

Exhibit No. Fig. 2 (original app.)

16. Attach as an Exhibit *(name the source)* a map which shows clearly, legibly, and accurately, and with the original printed latitude and longitude markings and a scale of distance in kilometers:

Exhibit No. Fig. 3 (original app.)

(a) the proposed transmitter location, and the radials along which profile graphs have been prepared;

(b) the 3.16 mV/m and 1 mV/m predicted contours; and

(c) the legal boundaries of the principal community to be served.

17. Specify area in square kilometers (1 sq. mi. = 2.59 sq. km.) and population (latest census) within the predicted 1 mV/m contour.

Area 6,203 sq. km. Population 14,138,155 (1990 Census)

18. For an application involving an auxiliary facility only, attach as an Exhibit a map *(Sectional Aeronautical Chart or equivalent)* that shows clearly, legibly, and accurately, and with latitude and longitude markings and a scale of distance in kilometers:

Exhibit No. N/A

(a) the proposed auxiliary 1 mV/m contour; and

(b) the 1 mV/m contour of the licensed main facility for which the applied-for facility will be auxiliary. Also specify the file number of the license.

19. Terrain and coverage data *(to be calculated in accordance with 47 C.F.R. Section 73.313)*

Source of terrain data: *(check only one box below)*

☒ Linearly interpolated 30-second database ☐ 7.5 minute topographic map

(Source: NGDC TPG-0050)

☐ Other *(briefly summarize)*

SECTION V-B – FM BROADCAST ENGINEERING DATA (Page 5)

Radial bearing (degrees True)	Height of radiation center above average elevation of radial from 8 to 16 km (meters)	Predicted Distances	
		To the 8.16 mV/m contour (kilometers)	To the 1 mV/m contour (kilometers)
*			
0	231	30.9	49.7
45	259	32.7	51.9
90	253	32.4	51.4
135	254	32.4	51.4
180	252	32.2	51.3
225	264	33.0	52.2
270	247	31.9	50.9
315	248	32.0	51.0

*Radial through principal community, if not one of the major radials. This radial should NOT be included in the calculation of HAAT. (site is located in principal community)

20. Environmental Statement *(See 47 C.F.R. Section 1.1301 et seq.)*

Would a Commission grant of this application come within Section 1.1307 of the FCC Rules, such that it may have a significant environmental impact? ☐ Yes ☒ No

If you answer Yes, submit as an Exhibit an Environmental Assessment required by Section 1.1311. Exhibit No. N/A

If No, explain briefly why not. See Stmt. D

CERTIFICATION

I certify that I have prepared this Section of this application on behalf of the applicant, and that after such preparation, I have examined the foregoing and found it to be accurate and true to the best of my knowledge and belief.

Name *(Typed or Printed)*	Relationship to Applicant *(e.g., Consulting Engineer)*
William P. Suffa	Consulting Engineer
Signature	Address *(Include ZIP Code)*
	Lahm, Suffa & Cavell, Inc. 3975 University Drive, # 450 Fairfax, VA 22030
Date	Telephone No. *(Include Area Code)*
January 16, 1992	(703) 591-0110

PURPOSE OF AMENDMENT

prepared for
The Fidelio Group, Inc.
New York, New York

Ch 282B (104.3 MHz) 16.4 kW (H&V) 251 m

The Fidelio Group, Inc. hereby proposes to amend its Application for Construction Permit filed May 1, 1991 (FCC File Number BPH-910502MQ) to specify a different antenna height above ground and average terrain with a corresponding decrease in power.

When the original application was prepared, Fidelio was advised by representatives of the Chrysler Building that its antenna would be 213 meters (700') above ground. Recently, Fidelio learned that the antenna would instead be located at 252 meters (827') above ground, along the spire of the building. Fidelio has prepared this amendment to specify the modified antenna height and surveyed ground elevation. The proposed power is reduced to maintain equivalent 60 dBu coverage to that shown in the original application. Further, 1990 Census data (not available when the original application was filed) is included herein.

Attached hereto are only the portions of the application which have changed: FCC Form 301, Figure 1 (the Antenna System Elevation Plan), and Statement D (Environmental Considerations. All other figures, statements and tables remain unchanged. With respect to coverage, the proposed 60 dBu coverage (amended) is within 0.1 kilometers of that shown in the original application in all directions. This change is insignificant, is beyond the resolution of the base map scale, and causes no effective change in the proposed coverage. The proposed 70 dBu coverage will be within 0.5 kilometers of the originally proposed coverage. This change cannot be resolved on the base maps, and will cause no material change in the percentage of area or population of the principal community which receives 3.16 mV/m coverage. The proposed facility will continue to satisfy the requirements of Section 73.213 of the FCC Rules in that its 60 dBu contour will extend no further than the existing WNCN facility towards any short spaced stations. For these reasons, new coverage and coverage comparison (73.213 study) maps are not supplied as they would be superfluous. Such maps will be supplied upon request.

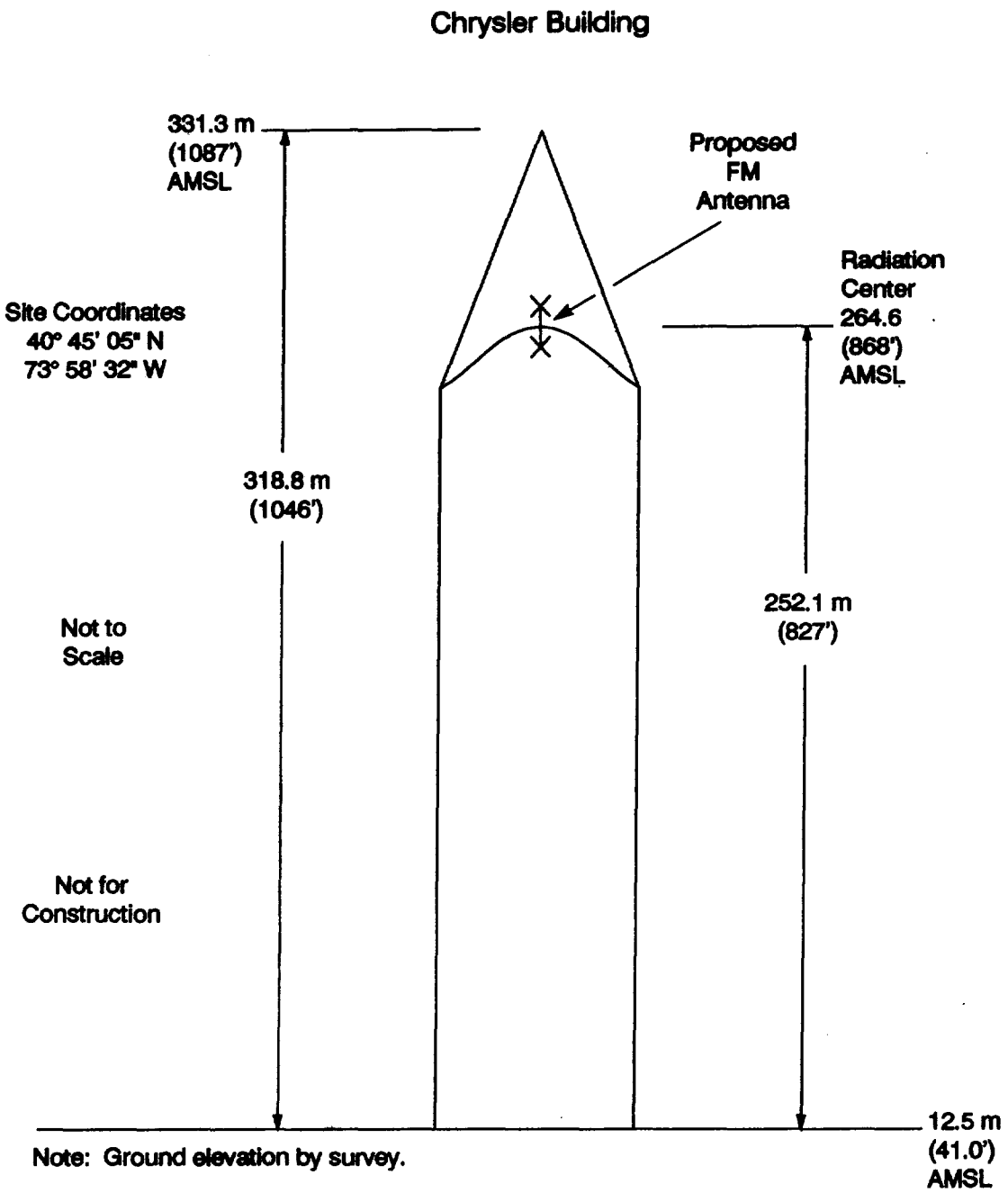

FIGURE 1 (AMENDED)
ANTENNA SYSTEM ELEVATION PLAN

prepared January 1992 for
The Fidelio Group, Inc.
New York, New York

Ch 282B (104.3 MHz) 16.4 kW (H&V) 251 m

Lahm, Suffa & Cavell, Inc.
Consulting Engineers - Fairfax, VA

Statement D

ENVIRONMENTAL CONSIDERATIONS

prepared for
The Fidelio Group, Inc.
New York, New York

Ch 282B (104.3 MHz) 16.4 kW (H&V) 251 m

The instant proposal is not believed to have a significant environmental impact as defined under Section 1.1306 of the Commission's Rules. Consequently, preparation of an Environmental Assessment is not required.

Nature of The Proposal

The applicant proposes to install its antenna and transmitter at the Chrysler Building. That antenna is proposed to be located alongside the spire of the building. While the building supports numerous other antennas for common carrier, and land mobile transmitters, there are presently no other broadcast facilities known to operate from the site (but other stations, including FM Stations WCBS, WPAT, WTFM (now WYNY) and WCBS-TV have operated from the building in the past). Section 1.1306(b), Note 1, indicates that use of existing structures and sites will be categorically excluded from environmental processing, unless the RF energy exposure guidelines will be exceeded, or the proposal will impact structures of historical significance. Further, Note 3 to Section 1.1306(b) indicates that categorical exclusion will apply to additional antennas and structures where similar antennas (or structures) are clustered. As noted above, the Chrysler building currently supports numerous other antennas for radio transmitters, and has supported broadcast antennas in the past. The antenna design contemplated for use by Fidelio will be coordinated with the building management to minimize visual impact; it is anticipated that separate horizontal and vertical dipole elements can be employed, as has been done by previous broadcast users, if necessary. Such elements are similar in size and shape to the land mobile antennas currently installed on the building. No visual impact is expected from the proposed construction.

Human Exposure to Radiofrequency Radiation

The proposed transmitting system will comply with the guidelines for human exposure to RF radiation contained in ANSI guideline C95.1-1982. The FCC has adopted the ANSI guideline as the maximum allowable exposure levels for humans in the vicinity of transmitting antennas. This site consists of publicly accessible areas, and areas restricted to workers employed by the Chrysler Building and the transmitting facilities located thereon. Restrictions include locked access doors with restricted key access.

The new antenna radiation center is proposed to be located at a height above ground (252 meters) such that the "worst case" guidelines shown in OST Bulletin No. 65 will not be exceeded at any point on the ground. The building does contain offices, but the area surrounding the proposed antenna location is unoccupied, and will remain so. Publicly accessible areas are at least 4 floors away from the proposed antenna. As with other proposals involving existing building structures, substantial attenuation is expected due to the steel-reinforcing of the concrete walls and the Nirosta steel cladding of the building.

Fidelio will establish by measurement, prior to commencing program tests, that the ANSI guideline is not exceeded within any publicly accessible area. If the measured RF energy levels exceed the ANSI guideline in such areas, corrective measures will be taken. Corrective measures which might be employed include restriction of access to areas exceeding the guideline.

Due to the distance between the Empire State Building and the Chrysler Building, it is believed that the RF energy levels from other broadcast facilities will be insignificant. In any event, the measurements to be taken by Fidelio will establish whether those facilities impact at all on the RF energy levels at the Chrysler building. All other facilities at the Chrysler Building are of low power (low level contributors) or limited duty cycle (time averaging provisions of the ANSI guideline apply), so detailed consideration is not warranted. The applicant for channel 282B will cooperate with these applicants and all other transmitting facility users at the site to ensure that no publicly accessible area exceeds the ANSI exposure guideline.

With respect to worker safety, the applicant expects a coordinated worker protection policy to be enforced at the site. All necessary steps will be taken, including but not limited to power reduction, discontinuance of operation, or use of auxiliary facilities to ensure that workers are adequately protected under the ANSI guideline. Full cooperation will be given to other site users with respect to this matter.

Conclusion

The instant proposal may be categorically excluded from environmental processing under Section 1.1306 of the Rules.

ATTACHMENT B

DECLARATION

T'ing C. Pei, under penalty of perjury, hereby declares the following to be true and correct:

1. I am the sole voting stockholder, President and Director of The Fidelio Group, Inc. ("Fidelio"), an applicant for a construction permit for a new FM broadcast station to operate on Channel 282B in New York, New York. I am preparing this Declaration for submission to the Federal Communications Commission in connection with Fidelio's petition for leave to amend its application to modify its proposed antenna height and related matters.

2. When Fidelio's application was prepared in the Spring, 1991, I understood that antenna space might be available on the Chrysler Building. After determining through Fidelio's then-legal counsel that that site was available, I instructed Fidelio's consulting engineers to obtain the specifications concerning the site which would be necessary for preparation of the application. I understand that William Suffa and Garrison Cavell, Fidelio's consulting engineers, then spoke with one of the Chrysler Building's engineers in order to secure the information necessary for the completion of the application. Thereafter, they provided me with a completed application which I reviewed, executed and delivered to Fidelio's then-counsel for submission to the Commission. At that time I had no reason to

believe that the application as prepared contained any incorrect information and, absent any such reason, I had no reason to doublecheck that information.

4. In November, 1991, a petition to deny Fidelio's application was filed. That petition raised several questions concerning Fidelio's specification of the Chrysler Building. In the course of gathering information for use in Fidelio's opposition to the petition to deny, I spoke with Mr. William Basset, the Chrysler Building's manager. We discussed Fidelio's proposed use, the allegations which were raised against Fidelio's application, and the nature of the Chrysler Building. During that conversation I determined from Mr. Basset that the antenna height originally specified in Fidelio's application -- i.e., 213 meters above ground, 211 meters above average terrain -- was likely inaccurate. Several days later (after apparently checking available records) Mr. Basset advised me that the space which would be available was instead at the 75th floor level which, he told me, is 252 meters above ground, 251 meters above average terrain. Apparently during the conversation between the Chrysler Building engineer and Messrs. Suffa and Cavell prior to the original preparation of the application, a miscommunication occurred which resulted in the use of the incorrect figure in the application as first filed.

5. In order to correct this error and to assure that

Fidelio's application accurately reflects the height of the space being made available by the Chrysler Building, I requested that Messrs. Suffa and Cavell prepare an appropriate amendment to the application. That amendment is being submitted simultaneously with Fidelio's opposition to the petition to deny.

T'ing C. Pei

Date: 16 January 1992

ATTACHMENT C

Declaration of William P. Suffa, P.E.

I, William P. Suffa, P.E. hereby declare under penalty of perjury that the following is true and accurate to the best of my knowledge and belief:

1. I am a principal of Lahm, Suffa & Cavell, Inc., Consulting Engineers (LS&C) located in Fairfax, Virginia. I am a registered professional engineer in the Commonwealth of Virginia (by examination) and the District of Columbia. My qualifications are a matter of record with the Federal Communications Commission. I have prepared this declaration on behalf of The Fidelio Group, Inc ("Fidelio") for submission to the Commission in connection with Fidelio's Petition for Leave to Amend its pending application for Construction Permit for channel 282B in New York, NY, FCC File Number BPH-910502MQ.

2. In connection with the preparation of Fidelio's application, I was advised by the then-legal counsel for Fidelio that Fidelio had obtained reasonable assurance of the availability of antenna space on the Chrysler Building in New York. In a conference call which included Fidelio's then-legal counsel and Garrison C. Cavell of LS&C, I spoke with John Welsch, who identified himself as the Building Engineer for the Chrysler Building, to obtain information concerning the height and other relevant specifications of the available space. My notes of the conversation with Mr. Welsch indicate that he advised me of the overall height of the structure, the height at which the FM antenna could be placed, and information related to other existing antennas on the structure. Mr. Welsch indicated that antenna space was available at heights of approximately 680 to 700 feet for a broadcast antenna. During the conversation, I indicated to Mr. Welsch that we would specify an

antenna height of 700 feet. On the basis of that information, which I believed to be correct, I prepared the engineering portion of Fidelio's application and provided it to Mr. T'ing Pei, President of the Fidelio Group.

3. In November 1991, I was advised by Mr. Pei that a Petition to Deny the application had been filed. That petition raised questions concerning the proposed use of the Chrysler Building as an antenna site. In addition, I was advised by Mr. Pei that during the course of investigation the allegations contained in the petition, he had learned that the antenna height originally provided by Welsch and specified in Fidelio's application did not accurately reflect the height of the space available on the building. According to Mr. Pei, he has been advised by the Building's manager that the correct available height is 264.6 meters above mean sea level (251 meters above average terrain). At Mr. Pei's request, I have prepared an amendment to reflect that correct height.

William P. Suffa, P.E.
Virginia Registration 18300
D.C. Registration 9013

January 17, 1992

CERTIFICATE OF SERVICE

[redacted]